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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. PARASTO SEDIGH FARASATI, Defendant and Appellant.	A123946 (Sonoma County Super. Ct. No. SCR-31427 & SCR-455427)

Defendant Parasto Sedigh Farasati was born in Iran and left that country with her family in 1977, when she was three years old. Defendant and her family came to this country in 1990, and she was granted status as a legal permanent resident. Defendant was convicted of possessing methamphetamine for sale in 2002 and 2005, pursuant to negotiated plea bargains in which defendant entered pleas of no contest (2002) and guilty (2005) in exchange for a grant of probation and diversion to a rehabilitation program instead of imprisonment. (Health & Saf. Code, § 11378.) When entering her pleas, she was advised in writing that her criminal convictions subjected her to deportation. Defendant successfully completed probation in July 2008.

In December 2008, defendant filed a petition for a writ of *coram nobis* in the trial court, seeking to vacate her convictions and to withdraw her pleas. Defendant declared that she entered her pleas without knowing that her convictions would constitute aggravated felonies that could cause her to be deported, and without discussing her

immigration status or the immigration consequences of her pleas with defense counsel. The trial court denied the petition, and this appeal followed. We affirm the order.

I. DISCUSSION

"[C]riminal defendants have ample opportunities to challenge the correctness of the judgments against them." (*People v. Kim* (2009) 45 Cal.4th 1078, 1105 (*Kim*).) Defendants may move to withdraw a plea, may appeal a judgment, may file a writ of habeas corpus while in custody, and may seek pardon from the Governor. (*Id.* at pp. 1105-1106; Pen. Code, §§ 1008, 1016.5, 1203.4.) But a defendant's ability to challenge a judgment has limits because society has an " ' " 'interest in the finality of criminal proceedings' " ' " that cannot accommodate endless litigation. (*Kim, supra,* at p. 1107.)

The writ of *coram nobis* is yet another avenue to challenge the correctness of a judgment but it is a narrow avenue, and its narrowness is purposeful. "[E]xpanding *coram nobis* to create a generalized common law postconviction, postcustody remedy would accord insufficient deference to a final judgment." (*Kim, supra,* 45 Cal.4th at p. 1107.) Accordingly, there are "strict requirements for this extraordinary type of collateral relief from a final judgment." (*Id.* at pp. 1101-1102.)

The requirements for obtaining a writ of error *coram nobis* are: (1) " 'Petitioner must show that "some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of judgment" ' "; (2) " 'Petitioner must also show that the "newly discovered evidence . . . [does not go] to the merits of issues tried" ' " (because issues of fact, once adjudicated, " 'cannot be reopened except on motion for new trial' "); and (3) " 'Petitioner "must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ." ' " (*Kim, supra,* 45 Cal.4th at p. 1093.)

A writ of *coram nobis* was found to be the appropriate remedy in situations " '[w]here the defendant was insane at the time of trial and this fact was unknown to court and counsel,' " and where the defendant was a minor and " 'appeared by attorney without the appointment of a guardian.' " (*Kim, supra,* 45 Cal.4th at p. 1094.) These situations presented a fact " 'which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of judgment.' " (*Id.* at p. 1093.) The writ is limited to such rare and unusual situations.

The writ of *coram nobis* " 'is not a writ whereby convicts may attack or relitigate just any judgment on a criminal charge merely because the unfortunate person may become displeased with his confinement or with any other result of the judgment under attack.' " (*Kim, supra,* 45 Cal.4th at p. 1092.) "Because the writ of error *coram nobis* applies where *a fact* unknown to the parties and the court existed at the time of judgment that, if known, would have prevented rendition of the judgment, '[t]he remedy does not lie to enable the court to correct errors of law.' " (*Id.* at p. 1093, original italics.) The " 'writ is not available where a defendant voluntarily and with knowledge of the facts pleaded guilty . . . because of ignorance or mistake as to the legal effect of those facts.' " (*Ibid.*)

In determining the reach of the writ of *coram nobis*, the California Supreme Court considered the situation presented here of a resident alien seeking relief on *coram nobis* from criminal convictions that may lead to deportation. (*Kim, supra,* 45 Cal.4th at p. 1084) The defendant in *Kim* alleged that he faced deportation and that his attorney was ineffective in failing to investigate the immigration consequences of the plea and in failing to negotiate an alternative plea to a nondeportable offense. (*Id.* at p. 1102.) The court denied relief upon concluding that "defendant has not stated a case for relief on the merits because he alleges no mistake of fact which, had it been known at the time of his plea, would have prevented rendition of the judgment." (*Id.* at pp. 1108-1109.)

The *Kim* court noted that there was nothing new in the allegedly new facts—defendant had been warned about the possibility of deportation when he entered his pleas.

(*Kim, supra,* 45 Cal.4th at p. 1102, fn. 14.) The alleged new fact of a threatened deportation was not actually a *fact* at all, but a legal consequence of his conviction, the court observed. (*Id.* at p. 1102.) The ineffective assistance of counsel claim likewise "relate[d] more to a mistake of law than of fact," and was a constitutional claim not cognizable on a writ of *coram nobis.* (*Id.* at pp. 1095, 1104.) Moreover, nothing about the alleged new facts would have prevented rendition of judgment. (*Id.* at pp. 1102-1103.) On this point, the high court observed that "[d]efendant's allegations that he would not have pleaded guilty had he been armed with these additional facts [about deportable offenses], or that counsel would have been successful in arranging a plea to a nondeportable offense had these facts been known, fundamentally misapprehends the pertinent inquiry. To qualify as the basis for relief on *coram nobis*, newly discovered facts must establish a basic flaw that would have prevented rendition of judgment. [Citations.] Such facts often go to the legal competence of witnesses or litigants, or the jurisdiction of the court. New facts that would merely have affected the willingness of a litigant to enter a plea, or would have encouraged or convinced him or her to make different strategic choices or seek a different disposition, are not facts that would have prevented rendition of the judgment." (*Id.* at pp. 1102-1103.)

Defendant Farasati's request for *coram nobis* relief is indistinguishable from *Kim*. As in *Kim*, there was nothing new in the allegedly newly discovered fact that defendant's convictions exposed her to deportation. Like the defendant in *Kim*, defendant Farasati was warned about the possibility of deportation when she entered her pleas. (*Kim, supra,* 45 Cal.4th at p. 1102, fn. 14.) When she entered her 2002 no contest plea to possessing methamphetamine for sale, defendant initialed a clearly written warning on the matter: "I understand that if I am not a citizen of the United States, conviction of the offense(s) may/will (circle one) have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. (Note: If convicted of an *aggravated felony*, defendant *will be deported*.)" (Original italics.) The word "will" was circled. The same warning was provided in 2005 (without a word circled).

Defendant argues that there is a new fact—the fact that she is a resident alien, which is a fact that was never discussed with her defense counsel. Defendant says "[t]he present case is distinguishable from *Kim*, as [defendant] claims that her legal status as [a legal permanent resident] rather than a US citizen was a fact not known by her attorneys who negotiated her plea bargain, including her sentence, and had the attorneys been aware of this fact, they would have negotiated a plea [to a nondeportable offense]." But defendant's immigration status was indisputably known to her. As the People rightly note, a defendant's claim for *coram nobis* cannot be based on defense counsel's ignorance of facts known to defendant. (*People v. Shorts* (1948) 32 Cal.2d 502, 514.)

Also, like *Kim*¸ the alleged new fact of a threatened deportation is not a *fact* at all, but a legal consequence of her convictions. (*Kim, supra,* 45 Cal.4th at p. 1102.) And defendant's allegation that defense counsel would have negotiated a plea to a nondeportable offense had her immigration status been known, "misapprehends the pertinent inquiry," as did the defendant's argument in *Kim*. "To qualify as the basis for relief on *coram nobis*, newly discovered facts must establish a basic flaw that would have prevented rendition of the judgment. . . . New facts that would merely have affected the willingness of a litigant to enter a plea, or would have encouraged or convinced him or her to make different strategic choices or seek a different disposition, are not facts that would have prevented rendition of the judgment." (*Id.* at pp. 1102-1103.) Status as a resident alien, unlike incompetency or a jurisdictional defect, does not prevent rendition of judgment.

We recognize, as did the *Kim* court, that defendant faces a harsh consequence flowing from her convictions. (*Kim, supra,* 45 Cal.4th at p. 1108.) But the consequence is not a result of any error in the judgment—it is a result of her possessing methamphetamine for sale and the stern treatment the immigration law applies to such offenses. It is a consequence that this court has no power to relieve.

II. DISPOSITION

The order is affirmed.

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Sepulveda, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.